



POLICE DEPARTMENT CITY OF NEW YORK

March 2, 2017

MEMORANDUM FOR: Police Commissioner

Re: Detective James White
Tax Registry No. 929351
Warrant Section
Disciplinary Case No. 2016-15180

Detective Michael Greaney
Tax Registry No. 947762
Detective Borough Queens South
Disciplinary Case No. 2016-15182

Charges and Specifications:

Disciplinary Case No. 2016-15180

1. Detective James White, on or about August 25, 2015, at approximately 0600, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he entered [REDACTED] first bedroom, without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

2. Detective James White, on or about August 25, 2015, at approximately 0600, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED], Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he searched [REDACTED], first bedroom, without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

Disciplinary Case No. 2016-15182

1. Detective Michael Greaney, on or about August 25, 2015, at approximately 0600, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he entered [REDACTED] first bedroom, without sufficient legal authority. *(As amended)*
P.G. 203-10, Page 1, Paragraph 5 ABUSE OF AUTHORITY

2. Detective Michael Greaney, on or about August 25, 2015, at approximately 0600, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED].

[REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he searched [REDACTED]

[REDACTED] first bedroom, without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

3. Detective Michael Greaney, on or about August 25, 2015, at approximately 0600, while assigned to the Warrants Section and on duty, in the vicinity of [REDACTED]
[REDACTED] Bronx County, engaged in conduct prejudicial to the good order, efficiency, or discipline of the New York City Police Department, in that he damaged Esther Thompson-Lampkins's property without sufficient legal authority. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

Appearances:

For the CCRB: Suzanne D. O'Hare, Esq.
Civilian Complaint Review Board
100 Church Street, 10th floor
New York, NY 10007

For Respondents: Philip Karasyk, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

Hearing Date:

December 13, 2016

Decision:

Not Guilty

Trial Commissioner:

ADCT David S. Weisel

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before the Court on December 13, 2016. Respondents, through their counsel, entered a plea of Not Guilty to the subject charges. The Civilian Complaint Review Board called Takesha Williams, Ezekiel Thompson and Esther Thompson-Lampkins as witnesses. Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondents Not Guilty of the charged misconduct.

FINDINGS AND ANALYSIS

The facts in this case generally were not in dispute. Respondents were assigned to the Warrant Section. On August 25, 2015, they were in possession of a Criminal Court bench warrant and three I-cards from the 48 Precinct Detective Squad (see Respt. Ex. A & CCRB Ex. 3a-c) for Individual 1. Individual 1 was around 20 years old and Respondents knew that at one point she lived with her mother, Takesha Williams. On the day in question, Takesha was renting living space in the apartment of her friend, Esther Thompson-Lampkins, at [REDACTED]

[REDACTED] in the Bronx. Takesha lived in the living room. Thompson-Lampkins's brother, Ezekiel Thompson, rented the second bedroom in the apartment. Thompson-Lampkins's bedroom was the first bedroom in the apartment (see CCRB Ex. 1, rough sketch of apartment layout). Thompson-Lampkins kept her bedroom door locked, using the regular doorknob key mechanism. Only Thompson-Lampkins possessed the key (Tr. 16-22, 51-52, 57- 58, 87, 88-91).

Respondents arrived at the apartment and Takesha answered. Ezekiel was present as well but Thompson-Lampkins was at work. Also present was [REDACTED], Takesha's fiancé and Individual 1's father. Takesha told the detectives that Individual 1 was not inside but they could enter the apartment and look for her. Respondents did not find Individual 1 in any of the open rooms or spaces. When they tried the first bedroom, the door was locked. Respondents asked Takesha and Ezekiel for entry. They told Respondents that they literally could not open the door, and did not give them consent to entry. Respondent Greaney forced the door open, damaging the door itself and displacing the knob from the door (see CCRB Ex. 2a-b, photographs of damage with

tape subsequently placed on knob and door). Respondents did not find Individual 1 in that bedroom or anywhere else in the apartment (Tr. 22-32, 36-37, 59-75, 81-82, 89-90).

Respondents are charged with the unlawful entry into and search of the first bedroom. The CCRB argued that Respondents did not have consent to enter that bedroom, and that the information they had concerning Individual 1's address was legally insufficient to otherwise justify access. Respondent Greaney also is charged with damaging the door.

TAKESHA WILLIAMS testified that she began living at [REDACTED] sometime around April 2015. On August 25, 2015, her daughter Individual 1 did not live with her. In fact, Individual 1 never lived with Takesha the entire period that Takesha was living with Thompson-Lampkins. Takesha contended that several officers, more than two, arrived at the door, although only two actually entered the apartment. She confirmed to them that she was Takesha Williams and Individual 1 was her daughter. She gave them consent to search the living room, but no further, because Thompson-Lampkins was not home. The officers said that because they had a warrant, they had authority to search all parts of the apartment. Takesha claimed that the officers also searched the cabinets, refrigerator and stove in the kitchen, as well as bedroom drawers. One of the officers broke down the door to Thompson-Lampkins's bedroom with his shoulder, splintering and cracking the door around the knob (Tr. 18, 22-30, 32, 36-37, 43-46, 53).

Takesha testified that she saw the warrant the officers were holding. The address on the warrant was [REDACTED], Bronx County. Takesha conceded at trial that she had lived at that location with Individual 1, but Takesha moved out of there around August 2014, approximately one year before the current incident. That was the last time they lived together. They had lived at the [REDACTED] location since the mid-00s and both had been listed on the lease. By August 2015, according to Takesha, Individual 1 had no permanent residence. She was "here and there, all over. . . . in the streets . . . just running around a lot." Thompson-Lampkins also

testified that Individual 1 never resided in Thompson-Lampkins's apartment (Tr. 33-34, 47, 52-55, 87- 88).

EZEKIEL THOMPSON identified Respondents as the officers that entered the apartment. He testified that he and Takesha told the officers that Individual 1 did not live there. Ezekiel explained to Respondents that Thompson-Lampkins was at work at the time. According to Ezekiel, Respondents did not look in any cabinets or drawers, only where a person could be concealed. Respondents told the residents that they either had to open the door to Thompson Lampkins's bedroom or Respondents "have to break it down." There was a third officer that entered at the end of the incident, but did not participate in the search (Tr. 60-65, 73-75, 77, 79).

RESPONDENT WHITE testified that he was assigned a bench warrant and three I-cards for Individual 1. The 48 Precinct Detective Squad was looking for her on two felony-level assault cases. The bench warrant (Respt. Ex. A) was dated January 28, 2015, and arose from a misdemeanor criminal trespass case. The process is that the court gives the authority to arrest the defendant, but the Department generates an address for her based on what she told the arresting officer. Here, that was [REDACTED]. The criminal trespass arrest occurred on September 8, 2014. The I-cards (CCRB Ex. 3a-c) were dated August 12, 13 and 14 of 2015, and listed the same [REDACTED] address. The incident location for one of Individual 1's cases was [REDACTED], and a complaining witness told Respondent White that she saw Individual 1 walking on [REDACTED] (Tr. 96-99, 113-16, 125, 131, 140).

Respondent White testified that he first went to the [REDACTED] address, but learned that Individual 1 no longer lived there. He did the same for another address listed for Individual 1 with negative results. A few days before August 25, 2015, Respondent White did a [REDACTED] [REDACTED] search, and learned that both Individual 1 and Takesha Williams had [REDACTED] [REDACTED] listed as their address with the agency. Respondent White believed that

this was [REDACTED] [REDACTED] was only a few blocks from [REDACTED]. Respondent White knew that Takesha was Individual 1's mother because of prior domestic incident reports involving both of them going back several years. The parties listed the same address on those DIRs. Respondent White also learned that Individual 1's co-defendant had been swiping a benefit card at businesses near [REDACTED]. He showed Individual 1's photograph to employees and they recognized her. Respondent White conceded that he did not check to see whose name utilities were in at the [REDACTED] apartment (Tr. 99-104, 117-21, 129-30).

Respondents and a third detective then went to [REDACTED], around 0600 hours on August 25, 2015. The third detective stayed outside to watch the windows and Respondents went up to the target apartment. Respondents contended that someone came to the door, looked out the peephole, and walked away. Eventually Takesha Williams answered the door and allowed them in. She said she had last seen her daughter the previous month but allowed the detectives to look around. Ezekiel Thompson gave them permission to search his room as well. They looked only in areas where a person could be concealed, not in drawers or cabinets. They also encountered [REDACTED]. Respondent White recalled that [REDACTED] had bailed out Individual 1 from jail on her most recent arrest, identifying himself as Individual 1's father on the bail application. This all contributed to Respondents' belief that Individual 1 was in the apartment (Tr. 104-11, 121 25, 133-37, 139, 141).

When it came to the locked bedroom, Respondent White claimed, the inhabitants "didn't want us looking in that room." He admitted they said the bedroom belonged to someone that was not there. Respondent White also admitted that they said the door was locked and they did not have the key. **RESPONDENT GREANEY** did not recall anything about a key. In any event, the delay in opening the door and the residents' reluctance to allow entry to a locked bedroom

solidified Respondents' suspicion that Individual 1 was present. After Respondents warned that they would have to force the door down, Respondent Greaney did so. They did not find Individual 1 there either (Tr. 111-12, 125-27, 137-39, 141-45).

Respondents White & Greaney: Specification Nos. 1 & 2

Respondents are charged in the first and second specifications against each of them with entering and searching, respectively, Thompson-Lampkins's locked bedroom without sufficient legal authority. It is undisputed that there was no consent to enter Thompson-Lampkins's bedroom. Thus, any legal authority to enter must be predicated on the bench warrant.

An arrest warrant generally affords a police officer authority to enter a dwelling in which the subject of the arrest warrant lives, when there is reason to believe that she is there. Payton v. New York, 445 U.S. 573, 603 (1980). Criminal Procedure Law § 530.70 (2) provides that a bench warrant "must be executed in the same manner as a warrant of arrest, as provided in section 120.80 [of the CPL, covering arrest warrants]". Officers in possession of a bench warrant are allowed to enter a residence if they reasonably believe the target to be present, just as they would for an arrest warrant. See People v. Jones, 99 A.D.3d 1254 (4th Dept. 2012) (police lawfully entered defendant's house to execute bench warrant for defendant's brother, where officers reasonably believed that brother, who resided at same house, was present when they entered); People v. Cabral, 147 Misc. 2d 1000, 1004 n.3 (Sup. Ct., Kings County 1990) (nature, function and manner of bench warrant are similar to arrest warrant). A reasonable belief, for these purposes, is based upon an assessment of the totality of the circumstances. See People v. Paige, 77 A.D.3d 1193, 1194 (3d Dept. 2010), aff'd, 16 N.Y.3d 816 (2011).

But there is a caveat: even if the officer reasonably believes the subject of the bench warrant to be present, if the premises are the dwelling of a third person, the officer must also obtain a search warrant. See CPL §§ 120.80 (4); 690.05 (2)(b)(i); People v. Baez, 173 Misc. 2d

380, 386 (Sup. Ct., Bronx County 1997). This is because the officer now is searching for something in someone else's residence, as opposed to a warrant designating the seizure of a person in her own residence. See Steagald v. U.S., 451 U.S. 204, 212-13 (1981).

This is in accordance with federal constitutional jurisprudence. An arrest warrant does not justify the search of a third party's residence absent a search warrant. See Steagald, 451 U.S. at 205-06. Police entry nevertheless is permitted, however, if the officers executing the arrest warrant at the third party's home have a reasonable belief that the suspect also resides there. See United States v. Lovelock, 170 F.3d 339, 344 (2d Cir. 1999) (arrest warrant does not authorize entry into third-party residence where officers believe suspect is not residing but merely visiting).

Thus, Respondents in this case would have been permitted to enter the apartment, based on the bench warrant, if they reasonably believed Individual 1 lived there. See Case Nos. 2014-12437-39, p. 5 (Oct. 13, 2015). The Court finds that their belief was reasonable. First, Respondent White established that Individual 1 no longer resided at the address she gave when she was arrested almost a year earlier. This was the address commonly stated to be "on the bench warrant," but in actuality the warrant was issued by the Court in January 2015 and, in accordance with the usual protocol, the Police Department simply listed her previously-given pedigree information to assist officers looking for her.

Respondent White next determined that both Takesha and Individual 1 were using [REDACTED] as their address [REDACTED]. This listing was active as of a few days before August 25, 2015. Thus, unlike one of the cases cited by the CCRB (Tr. 155-56) (*Case Nos. 2014-12282-84*, p. 6 [Oct. 24, 2016]), the subject of the warrant provided the address where the warrant was executed as her own residence in official documentation. Additionally, Respondent White knew that Individual 1 and Takesha had lived together in the past, based on several

DIRs. Again, unlike *Case 2014-12282-84* (pp. 5-6), where the subject gave one address in a DIR and the other party gave the address where the warrant later was executed, here the subject and her mother both gave the same address in DIRs going back several years, albeit not [REDACTED]

[REDACTED]. They nevertheless reasonably appeared to still live together in August 2015, as evidenced by the [REDACTED] registration. The warrant was executed around 0600 hours, when people are likely to be in their residences. When Respondent White arrived at the apartment and found not only Takesha but also Individual 1's father, [REDACTED], this only confirmed their suspicions that Individual 1 lived there as well.

Therefore, it was reasonable for Respondents to believe both that Individual 1 lived in the apartment and that she was present at the time. The administrative prosecutor's implied argument on cross examination that, having not found Individual 1 in any of the other rooms, Respondents should have stopped before entering the locked bedroom (Tr. 123-24), is an invitation to perform bad police work and should be rejected. Nor is there any established independent obligation to do any specific kinds of surveillance or background checks before executing the warrant (Tr. 118-20, 128-29).

Furthermore, *Case Nos. 2014-12437-39* (Tr. 157-58) is inapposite because the indicators in that case, like the subject's daughter's admission that he would babysit her son, the presence of the subject's vehicle near the location in question, and the finding of a man's fedora on the windowsill, at most would have indicated that the subject was present in a third party's premises. In Respondents' case, in contrast, the detectives developed specific information that the subject listed the location as her residence and that she was likely to be present at the time. Accordingly, the Court finds Respondents Not Guilty of Specification Nos. 1 and 2 against each of them.

Specification No. 3

In the third specification against Respondent Greaney, he is charged with damaging Thompson-Lampkins's bedroom door without legal authority when he forced it open. It is undisputed that Respondent Greaney caused damage to the door when entering to search for Individual 1. The door knob became dislodged from where it was supposed to be. Although the residents taped it back together, the damage is still visible.

The tribunal has found, however, that Respondent Greaney's entry was justified. Therefore, the damage was not done without sufficient legal authority. There is a certain discordance to this result, as Thompson-Lampkins did not bar the detectives entry into her bedroom. In fact, she was not even home at the time. The incident was in no way her fault, yet it was her property that got damaged. Other civil remedies may exist in a situation like this. Respondent Greaney, however, only is charged with damaging the door without sufficient legal authority. He is found Not Guilty of this specification.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

MAY 23 2017

JAMES P. O'NEILL
POLICE COMMISSIONER